trial court charged the jury that although the plaintiff was guilty of continuing negligence, yet if his position was one which was or ought to have been obvious to the motorman and if the latter was found to have been negligent, the motorman's negligence was the proximate cause of the injury, without reference to the plaintiff's conduct. *Held,* that this charge was erroneous as it enabled the jury to find a verdict for the plaintiff, although the motorman could not have avoided the accident when the moment arrived at which he knew or should have known of the presence of the plaintiff. *Carlson v. Connecticut Co.* (1919, Conn.) 108 Atl. 531.

See COMMENTS, *supra,* p. 896.

WILLS—REVOCATION—INTENT OF THE TESTATOR.—The testator wrote a letter to his attorney directing him to "Please destroy a will I made in favor of Thomas Hart." The letter was signed in the presence of two witnesses and was attested by them. The attorney received the letter but failed to destroy the will. The statute provided that a will should not be revoked "otherwise than by some other will in writing or some other writing of the testator declaring such revocation . . . and executed with the same formalities with which the will was required by law to be executed or unless such will be . . . destroyed . . . by the testator himself or by another person in his presence and by his direction." *Held,* that the will was not revoked. *In re McGill's Will* (1920, App. Div.) 181 N. Y. S. 48.

The general rule is that there must be an intention to revoke accompanied by one of certain physical acts required by the statute. Mere intention to revoke presently or at a future time is not sufficient. See 3 A. L. R. 833, note; *In re Voorhis' Will* (1889, Sup. Ct.) 7 N. Y. S. 596, 54 Hun, 637. An instrument not a will but executed with the same formalities was held to have revoked a previous will. *In re Backus' Will* (1900, Sup. Ct. App. Div.) 63 N. Y. Supp. 544, 49 App. Div. 410. The rule is the same under the Wills Act (1837) sec. 20. *Toomer v. Sobinska* [1907] P. 106. In the instant case the writing was of sufficient formality had it manifested a present intention to revoke. *Tynan v. Paschal* (1863) 27 Tex. 286. At best it intended a destruction of the will by the attorney not in the presence of the testator as required to constitute a valid destruction under the wording of the statute.

WILLS—UNDUE INFLUENCE—BURDEN OF PROOF.—Appeal from probate of a will on the ground that it was obtained by undue influence. The facts only showed that the defendants had had ample opportunity to influence the testator. *Held,* that the will should stand. *Rice v. Rice* (1920, Ore.) 188 Pac. 181.

Mere proof of opportunity to exercise undue influence does not sustain the burden of proving the same. *Sturdevant v. Sturdevant* (1919) 92 Ore. 269, 178 Pac. 192; *Downey v. Guilfoile* (1919, Conn.) 107 Atl. 562, (1919) 29 YALE LAW JOURNAL, 133. For discussion of the probative value of "presumptions" in such cases, see COMMENT (1916) 26 YALE LAW JOURNAL, 62, 777; (1908) 18 *ibid.,* 55.

WORKMEN'S COMPENSATION ACT—INJURY ARISING "OUT OF THE EMPLOYMENT"—PLAYFUL SHOOTING OF WATCHMAN.—The plaintiff was employed by the defendant to take care of the latter's grounds, to drive off trespassers, and to protect the property generally. Mischievous boys were shooting air guns from adjoining land in the general direction of the plaintiff, endangering both the glass in the defendant's buildings and the plaintiff who was engaged in laying a brick walk. He drove the boys away and returned to his work on the walk. The boys resumed firing in the hope of being pursued again and the plaintiff was hit by a shot, for which injury he sought compensation. *Held,* that compensation should be granted, as the injury "arose out of the employment." *Munro v. Williams* (1920, Conn.) 109 Atl. 129.

See COMMENTS, *supra,* p. 901.